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IN THE

Supreme Court of the United States

October Term, A.D., 1956

No. 641

PAUL HAMMERS,

Petitioner,

vs.

THE BOARD OF FIRE AND POLICE COMMISSIONERS
Of the City of Mattoon, Illinois,
a Municipal Corporation,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS, CAUSE NO. 34,163.
THERE HEARD ON APPEAL FROM THE APPELLATE COURT OF ILLINOIS, THIRD DISTRICT.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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McCORMICK AND HENDERSON, INC., CHICAGO

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May It Please The Court:

In the Courts of Illinois, ranging from the Administrative Board of the City of Mattoon through the Supreme Court of Illinois, some ten or twelve claimed defensive factors have been assigned by the present Petitioner. In this Court, the Petition includes only one of them, viz, the Petitioner's contention that the order discharging him as a police patrolman of the City of Mattoon, Illinois, violates the Constitution of the United States of America. Actually, the Opinion of the Appellate Court of Illinois amply dis-

poses of the matter without help from the Respondent. To clarify the true situation with reference to the present contention of the Petitioner, however, this Opposition Brief is respectfully submitted.

STATEMENT OF FACTS.

In January, of 1952, a Miss Nedra Ellsworth was walking home from the business district of Mattoon between 9:30 and 10:00 P.M. An unidentified man assaulted her and beat her with a brick or some other object. She was seriously injured and was taken to the hospital and was not expected to live (Abst. 23). The attack occurred in the 1400 Block on Lafayette Avenue. Its viciousness was marked and the entire community, especially in the vicinity of the assault, was in a state of agitation.

Larkin H. Jones was Chief of Police of Mattoon. The Department, under his supervision, was charged with the duty of seeking to assure against similar attacks upon other innocent persons by capturing the assailant.

On January 29, 1952, a meeting to plan strategy was held at the Police Department (Abst. 23-24). The plaintiff, Paul Hammers, was present. There were two or more other officers present. A plan was made. It entailed staking out several officers in private cars in the vicinity in which the attack had occurred to avoid alarming the culprit. Another officer, Mr. Heckwine, was to be disguised as a woman and to serve as a "decoy". The arrangements were set up so that the Department would have approximately four men or more who could constantly observe the decoy officer as he walked along the sidewalks in the danger area. Heckwine was to continue to walk the area and was on his fifth round when he was assaulted (Abst. 25). After the trap should have been "sprung" following the assault upon Heckwine, in his female disguise, it was found that the plaintiff, who was an alerted officer participating in the plan, had left his post (Abst. 26).

On February 1, 1952, Chief Jones submitted to the Chairman of the Board of Fire and Police Commissioners a set of charges (Abst. 3-5).

Trial was had on those charges. The Appellate Court of Illinois reversed an Order of the Board discharging Petitioner Hammers. This reversal was because of inadequate notice of the hearing. (*Hammers* vs. *Board of Police and Fire Commissioners,* 1 Illinois Appellate (2d) 421; 117 Northeastern Reporter (2d) 798. *Abstract Only.*)

After the reversal, Hammers was reinstated. May 17, 1954 there were served upon him personally the same charges as those preferred by Chief Jones February 1, 1952 concerning his leaving his post of duty on January 29, 1952. Other charges were added. (Abst. 2-3). These other charges were withdrawn. The notice served upon Hammers contained a complete copy of the Jones charge of February 1, 1952, even including the copy of the signature of Chief Jones, as accuser. It was not only the same as the one upon which hearing was had February 4, 1952, which hearing was a nullity, as a matter of law, because of the Appellate Court's subsequent holding that the Board had no jurisdiction because of the inadequacy of notice—the Charge was not only the same as that one, but the Charge, in point of fact, was actually a word-for-word incorporation of the letter of complaint submitted by Chief Jones. (Abst. 3-5).

The cause was then called for hearing May 21, 1954, before the Board pursuant to the written notice served upon the plaintiff May 17, 1954 (Abst. 21). The plaintiff, by his counsel, presented, orally, a denial of the charges, of the power of the Board to bring charges, of the jurisdiction of the Board and of the jurisidiction of the Board to bring the charges. He also made an oral motion attacking the charges. He obtained no ruling upon the motion (Abst. 22).

Some four hundred twenty-five pages of testimony and evidence were taken. All charges except those contained in the letter of complaint submitted by Chief Jones February 1, 1952 (Abst. 3-5) were withdrawn (Abst. 11) and the Board's decision was expressly stated to be based solely upon the charges contained in Chief Jones' complaint of February 1, 1952 (Abst. 11).

The Petitioner was, at that hearing, given ample time to assemble his case, arrange for the attendance of witnesses and complete his preparation; then all except the Chief Jones charges were withdrawn or stricken because the Board concluded they were barred, as claimed in Petitioner's special defenses; the labyrinthine pathways of this evidence have been explored before four State of Illinois tribunals.

The only point made by the Petitioner in his present Petition for Certiorari is that his discharge as a policeman was violative of the Federal Constitution because the Administrative Board acted as accuser and judge. But it is essential to recall that the Board did not act as accuser and judge. The record clearly shows that the accuser was Chief Larkin H. Jones (Abst. 3-5), and that the only connection the Board had with the only charges upon which the plaintiff was tried and dismissed was to have them written down and personally served, to conform with the Statute and with the Appellate Court's opinion in *Hammer* vs. *Board,* 1 Ill. App. (2d) 421. This writing clearly showed Jones was the accuser.

The Constitution of the State of Illinois contains substantially the same protective provisions as those in the United States Constitution upon which Petitioner seeks now to rely. And simply clarifying the situation, as above, so as to demonstrate that the Chief of Police was the Accuser, shows the inapplicability of the cases relied upon

by the Petitioner, viz, *Commissioners of Drainage District* vs. *Smith,* 233 Illinois 417; *Smith* vs. *Department of Registration, etc.,* 412 Illinois 332; *St. Joseph Stock Yards Co.* vs. *U. S.,* 298 U. S. 38; *Tumey* vs. *Ohio,* 273 U. S. 510, and the other authorities cited by Petitioner in support of the well established and perfectly proper rule that a litigant cannot be compelled to submit his controversy to a tribunal of which his adversary is a member. (Pages 425-426, *Commissioners of Drainage District* vs. *Smith,* 233 Illinois 417.)

The claimed analogy between the instant case and the hypothetical situations set up by the Petitioner, such as the one on Page 15 of his Petition, is indeed too attenuated to carry any weight.

In *Tarr* vs. *Hallihan,* et al, 375 Illinois 38, at Pages 40 and 41 of its opinion, the Supreme Court of Illinois said:

> "We are unable to agree with appellants' contention that the procedure is lacking in due process because the complaints were signed by an employee of the department. That appellants are entitled to a hearing before an unbiased tribunal is not questioned. However, the mere fact that charges are made by an employee of the department does not, in our opinion, establish that the dental examining committee would be prejudiced against appellants."

By the same token, the fact that the Chief of Police preferred the charges involved here is not a valid ground to support a contention that the discharge of the Petitioner from the Police Department was unconstitutional.

CONCLUSION.

The Appellate Court of Illinois, in entering its final judgment in this cause, accurately stated the situation in its quotation from *Pipe Trades, Inc.* vs. *Rauch,* 2 Illinois

(2d) 278, on Page 17 of the Illinois Appellate Court opinion in the instant case (Pages 32 and 33, Petition for Writ of Certiorari herein):

> "In *Pipe Trades, Inc.*, vs. *Rauch*, 2 Ill. 2d 278, it is said at page 389: 'Looking to the first contention, the argument advanced seems to be that due process of law means judicial process, a premise long since rejected by State and Federal courts. (Citations.) Insofar as due process of law arises in public administrative law, the rule is concisely stated in 42 Am. Jr., Public Administrative Law, Sec. 116, as follows: 'While the constitutional guaranty of due process of law, the object of which is to preserve personal and property rights against the arbitrary action of public officials, applies to administrative as well as judicial proceedings, due process is not necessarily judicial process, except in the case of punishment for crime, and all the formalities of judicial proceedings are not essential to constitute due process of law in an administrative proceeding.' The same section, and many of the cases cited therein, tells us that administrative process by a board, executive or administrative officer, is as much due process as is judicial process, particularly when judicial review of the administrative action is provided.' Again the court says at page 290: 'Thus, the requirements have been fully met in this case for it is unchallenged that appellant had notice and a hearing, and, further, it is apparent that a full process of judicial review has been available before the administrative order becomes final.' "

The Supreme Court of Illinois rejected the claim of Petitioner Hammers that his constitutional rights had been violated. It denied his Petition for Leave to Appeal to that Court (Pages 38 and 39, Petition for Writ of Certiorari here). That denial, the Opinion of the Appellate Court, the

Judgment of the Trial Court and the Order of the Board are all supported and the instant Petition for Writ of Certiorari should be denied.

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